



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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In re:

SHAPES/ARCH HOLDINGS L.L.C., et al.,

Debtors.

Case No. 08-14631 (GMB)
(Jointly Administered)

Judge: Gloria M. Burns

Chapter: 11

**ORDER GRANTING THE DEBTORS' MOTION FOR AN ORDER APPROVING:
(A) THE COMPETITIVE PROCESS FOR THE SALE OF THE REORGANIZED
DEBTORS' EQUITY PURSUANT TO THE DEBTORS' SECOND AMENDED
PLAN OF REORGANIZATION AND (B) APPROVING A BREAK-UP FEE
AND EXPENSE REIMBURSEMENT**

The relief set forth on the following pages, numbered two (2) through eight (8) is hereby

ORDERED:

DATED: 5/20/2008



Honorable Gloria M. Burns
United States Bankruptcy Court Judge

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Order Granting the Debtors' Motion For an Order Approving: (a) the Competitive Process for the Sale of the Reorganized Debtors' Equity Pursuant to the Debtors' Second Amended Plan of Reorganization and (b) Approving a Break-Up Fee and Expense Reimbursement

Upon consideration of the Debtors' Motion for an Order Approving: (a) the Competitive Process for the Sale of the Reorganized Debtors' Equity Pursuant to the Debtors' Second Amended Plan of Reorganization and (b) Approving a Break-Up Fee and Expense Reimbursement (the "Motion"),¹ any objections thereto, and for good cause shown, it is hereby ORDERED:

1. That the Motion is GRANTED as set forth herein.
2. That Arch is approved as the stalking horse bidder pursuant to the Amended Plan.
3. That the Competitive Process is approved as follows:
 - a. Upon entry of this Order, the Debtors, through the Sales Consultant, shall begin the formal sales process, including the coordination with the Debtors' personnel of due diligence requests from prospective bidders, arranging for advertising as appropriate, disseminating teasers and arranging for management meetings.
 - b. To be considered by the Debtors, in consultation with the Committee, an offer for the purchase of all the equity of reorganized Shapes/Arch must be a qualified bid as provided herein (a "Qualified Bid"). A Qualified Bid must be in writing and submitted so as to be actually received by the Notice Parties listed in the Motion no later than June 25, 2008, at 12:00 noon (the "Bid Deadline"). A Qualified Bid must contain a mark-up of such bidder's proposed plan to show all modifications from the Amended Plan and exceed Arch's plan funding

¹ Unless otherwise defined herein, capitalized terms shall have the same meanings ascribed to them in the Motion.

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commitment by at least \$1,950,000 (consisting of the Break-Up Fee, the Expense Reimbursement, the In Lieu of Termination Fee, and a minimum \$150,000 increase to Arch's proposed \$5,000,000 Class 10 Distribution) (the "Initial Overbid"). The only material modifications to the Amended Plan may be to (i) replace Arch as the Plan Funder (as defined in the Amended Plan), (ii) provide for the payment in full on the Effective Date of the Class 3 Arch Acquisition DIP Claim; (iii) increase or eliminate the caps on the amount of the Allowed Claims in Class 1, Class 2 and/or Priority Tax Claims and otherwise, including the Plan Funding Commitment (as defined in the Amended Plan); and (iv) increase the Class 10 distribution to general unsecured creditors (the "Class 10 Distribution") by at least \$150,000.00 over and above the distribution proposed under the Amended Plan (an "Alternative Plan"). The mark-up must include the bidder's proposed Schedule 8.1 of executory contracts and unexpired leases to be assumed. The Alternative Plan may also include non-economic, non-material modifications provided that such modifications do not cause the Alternative Plan (in the Debtors' discretion after consultation with the Committee) to require re-solicitation under Section 1127 of the Bankruptcy Code.

c. To be considered a Qualified Bid, a person interested in purchasing the Debtors' equity must, no later than the Bid Deadline, provide the following additional information to the Notice Parties:

i. Identification of the potential bidder, its principals, and the representatives thereof who are authorized to appear on the potential bidder's behalf for all purposes, and an explanation of any affiliation with a competitor of any of the Debtors.

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ii. An executed, binding and irrevocable offer in the amount of at least the Initial Overbid that also identifies any potential, non-material modifications to the Amended Plan, which Qualified Bid will be irrevocable until at least two days after conclusion of the Confirmation Hearing.

iii. Written evidence, satisfactory to the Sales Consultant, the Debtors and the Committee, that the potential bidder has the financial wherewithal and ability to fully fund and consummate the Alternative Plan upon an Effective Date (as defined in the Amended Plan) not later than July 31, 2008, which shall include the following: (a) current financial statements, (b) contact information for parties that can confirm financing availability, (c) proof of debt or equity funding commitments, and (d) other information that would show the potential bidder's financial ability to fund the Alternative Plan.

iv. Provide a good faith deposit of \$4,500,000 in the form of a certified check or wire transfer to be held in escrow by the Debtors' counsel (the "Deposit").

v. Written confirmation that the potential bidder's offer is not subject to financing or any contingencies other than any contingencies contained in the Amended Plan. Potential bidders shall have until 7:00 p.m. (Eastern Time) on June 26, 2008, to definitively satisfy any financing contingencies contained in an otherwise Qualified Bid; if the potential bidder has not removed all financing contingencies by this time, its bid will not be considered a Qualified Bid and the potential bidder will not be eligible to participate in the Auction (defined below).

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d. Any party wishing to participate in the Competitive Process must submit a Qualified Bid no later than June 25, 2008, at 12:00 noon (Eastern Time) (the "Bid Deadline") to the Notice Parties. Any bid received after the Bid Deadline (unless extended by the Debtors in consultation with the Committee) shall not constitute a Qualified Bid, and shall not be considered by the Debtors or the Sales Consultant.

e. In the event a Qualified Bid is timely received by the Notice Parties, the Debtors, through the Sales Consultant and in consultation with the Committee, shall conduct an "auction" for competitive plans on June 27, 2008, at 10:00 a.m. at the offices of Cozen O'Connor, 1900 Market Street, Philadelphia, Pennsylvania (the "Auction").

f. The effective date of the Amended Plan or the Alternative Plan will be no later than July 31, 2008.

g. The reorganized Debtors' equity will be sold to a single bidder, in a single sale. As set forth above, all bidders must submit the Amended Plan, revised only: (i) to replace Arch as the Plan Funder; (ii) to provide for payment in full on the Effective Date of the Class 3 Arch Acquisition DIP Claim; (iii) to increase or eliminate the caps on the amount of the Allowed Claims in Class 1, Class 2 and/or Priority Tax Claims and otherwise, including the Plan Funding Commitment (as defined in the Amended Plan); and (iv) to increase the Class 10 Distribution as set forth in paragraph 3(b) hereinabove.

h. After the Initial Overbid, successive bids at the Auction shall be in increments of no less than \$150,000.

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4. That, in the event Qualified Bids are timely submitted, the Debtors, through the Sales Consultant, and in consultation with the Committee, will conduct the Auction between and among Arch and all parties submitting a Qualified Bid. In the event that no Qualified Bids are submitted by the Bid Deadline, then Arch will be deemed the Successful Bidder and the Debtors shall proceed with confirmation of the Amended Plan.

5. At the Auction, the Debtors shall take into account Arch's entitlement to the Break-Up and Expense Reimbursement in conducting the Auction and at all times in determining which bid is the higher and better bid and ultimately which bid is the highest and best bid. Should overbidding occur, Arch will have the right, but not the obligation, to participate in the bidding and to be approved as the successful bidder based on any such subsequent overbid provided that Arch's overbid is determined to be the highest and best bid.

6. The bidding will be continuous and competitive and will not end until all Qualified Bidders have submitted their last and best offers.

7. That, at the conclusion of the Auction, the Debtors, through the Sales Consultant, and after consultation with the Committee, shall announce the highest and best bid (the "Successful Bidder") and the second place bidder (the "Second Place Bidder").

8. That the final bid of the Second Place Bidder shall remain in place through the Effective Date, and if for any reason the Successful Bidder does not timely close, the Debtors, after consultation with the Committee, shall have the right to accept the bid of the Second Place Bidder and close with the Second Place Bidder.

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9. That the Debtors shall seek confirmation of the Amended Plan with Arch or, in the event Arch is not the Successful Bidder, the Alternative Plan with the Successful Bidder at the Confirmation Hearing.

10. That ballots accepting or rejecting the Plan will be due June 27, 2008. The Court finds that because the only changes to the Amended Plan will be to: (i) replace Arch as the Plan Funder, (ii) to provide for payment in full on the Effective Date of the Class 3 Arch Acquisition DIP Claim; (iii) to increase or eliminate the caps on the amount of the Allowed Claims in Class 1, Class 2 and/or Priority Tax Claims and otherwise, including the Plan Funding Commitment (as defined in the Amended Plan); and (iv) increase the Class 10 Distribution as outlined in paragraph 3(b) hereinabove, there will be no material changes in the Amended Plan if Arch is not the plan funder that will negatively impact any class of creditors.

11. That as soon as practicable after the conclusion of the Confirmation Hearing, Deposits (plus accrued interest, if any) will be returned to all bidders except the Successful Bidder and the Second Place Bidder. If the Successful Bidder's plan is confirmed and becomes effective, the Successful Bidder's Deposit (plus accrued interest, if any) will be applied at closing and the Second Place Bidder's deposit will be returned promptly after the Effective Date of the Amended Plan or the Alternative Plan.

12. The Effective Date of the Amended Plan or the Alternative Plan will be no later than July 31, 2008.

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13. That any dispute as to any bidder's intent or ability to close will be resolved by the Court at the Confirmation Hearing.

14. That the Break-Up Fee and Expense Reimbursement are hereby approved and shall be paid to Arch, in full, on the Effective Date if it is not the Successful Bidder.

15. The Court shall retain jurisdiction to enforce, interpret and implement the terms of this order.

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